

Application No. 10/601,041
Amdt. Dated Dec. 13, 2004
Reply to Office Action of August 11, 2004

REMARKS/ARGUMENTS

1. Remarks on the Amendments

Claims 1-2, 8-9, 12-13 and 15 have been amended to more specifically define Applicants' claimed invention.

Antecedent basis of the phrase "covered by a water proof coating" in the amended Claims 1, 8, 12 and 15 can be found on page 9, lines 8-9 of the Specification and Figs. 3 and 4, as filed.

Applicant respectfully submits no new matter has been introduced by the amendments.

2. Response to the Claim Rejections Based Upon 35 U.S.C. §112

Claims 1-14 stand rejected under 35 USC §112, second paragraph. This rejection is respectfully traversed by the amendments.

More specifically, Claims 1, 8, 12 and 15 have been amended to define the heavy material with a density greater than 1.0 g/cm^3 , as suggested by the Examiner. Claims 2, 9 and 113 have been amended to define the high density materials with having a density greater than 1.0 g/cm^3 , as suggested by the Examiner. Further, upon the amendment of Claim 12, the antecedent basis in Claim 13 has been provided.

Moreover, Claim 1 and the specification have been amended to remove the parentheses around the unit of density, as suggested by the Examiner.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 1-14 based upon 35 U.S.C. §112.

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3 Response to the Objection to the Drawings

The drawings stand objected because they contain photocopies of photographs. This objection is respectfully traversed.

The Examiner stated that photocopies of photographs are not permitted where the subject matter illustrated is easily rendered in a drawing.

Applicants respectfully point out that in Figs. 3 and 4, the only drawings containing photographs, Applicants have not only used the photographs to illustrate the structure of the skimmer basket weight, but more importantly to illustrate the water proof coating used to cover the weight (see page 9, lines 8-9 of the specification as filed). Applicants have relied on the structural component clearly illustrated by the photographs to illustrate the inventive features of the instant invention. This will be more clearly understood in the argument hereinafter in the response to the rejections based on 35 U.S.C. §103(a).

Applicants concern that by replacing the photographs with drawings such as that shown in Fig. 1, as suggested by the Examiner, the structural component of water proof coating covering the weight will no longer be appropriately illustrated.

Therefore, Applicants respectfully request Examiner's reconsideration, and withdrawal of the objection to the drawings.

4. Response to the Rejections of Claims 3 and 24 Based Upon 35 U.S.C. §103(a)

Claims 1-17 stand rejected under 35 USC §103(a) as being unpatentable over Dye (US Patent No. 5,672,271) in view of Felix, Jr. et al. (US Patent No. 6,592,756). This rejection is respectfully traversed by the amendment.

Claims 1, 8, 12 and 15 are independent claims, and Claims 2-7, 9-11, 13-14 and 16-17 are dependent claims of Claims 1, 8, 12 and 15, respectively.

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A determination under 25 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and prior art; and (4) the objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ 2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

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The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of the establishing prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the application. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

Applicants submit that nothing in the art of record teaches or suggests the subject matter positively recited in independent Claims 1, 8, 12 and 15. As recited in Claims 1, 8, 12 and 15, the skimmer basket weight of the instant invention is covered by a water proof coating, and the skimmer basket weight has a sufficient weight to prevent the skimmer basket from floating when a pool pump is off.

As specifically described in the instant Specification on page 8, lines 5 to 8, the instant "weight is then coated with plastic, rubber, paint or other waterproof materials to prevent the weight from being damaged or degraded by the water in the pool or any of the chemicals therein"; and on page 9, lines 8-9, the weight illustrated in Fig. 4 is covered by a plastasil coating.

As stated by the Examiner, Dye fails to teach the weight being coated with a water proof coating. As further stated by the Examiner, Dye also fails to teach the skimmer basket weight being heavy enough to prevent the skimmer basket from floating when a pool pump is off.

Dye teaches a collapsible pool skimmer basket having a bag made of a flexible resilient mesh and a weight disk at the bottom of the bag to extend the mesh bag. Such a weight disk is for maintaining the shape of the flexible mesh bag, and is not for preventing the regular rigid skimmer basket from floating when a pool pump is off.

Therefore, Dye fails to teach Applicants' claimed invention.

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The deficiencies of Dye are not overcome by Felix, Jr. et al.

Felix, Jr. et al. teach a skimmer basket handle, and a reversible weight (500). Felix, Jr. et al. specifically teach the weight (500) is a solid block positioned at the center of the skimmer basket between the bottom of the basket and the solid flange portion of the handle (300), as shown in Figs. 6-10 of the reference. As shown in Figs. 1 and 2 of the reference, the flange portion (340) is right above the flow valve (140) of the skimmer. To prevent blocking the flow valve, Felix, Jr. et al. teach that the weight (500) can be reversed, if there is not enough a clearance between the flow valve and the threaded end portion (360) of the handle.

Applicants respectfully point out first that the Felix, Jr. et al.'s device is not combinable with Dye's collapsible skimmer basket, in the manner suggested by the Examiner. Dye's circular weight disk is used for extending the mesh bag to maximize the available surface area of the mesh for filtering (Column 4, lines 21-30 of the Dye's). To put Felix, Jr. et al.'s solid weight block (500) at the center of Dye's mesh bag, the solid weight would substantially block the bottom of the mesh bag for filtering. Furthermore, by doing so, as suggested by the Examiner, Dye's desired cylindrical shape of the bag would be lost. Moreover, it is apparent to one ordinary skill in the art that because of the flexibility of Dye's mesh bag, Felix, Jr. et al.'s weight would sit on top of the flow valve to block the water flow in the skimmer.

Applicants also point out that in Column 2, lines 4-20 of Felix, Jr. et al.'s reference, as cited by the Examiner, the reference merely describes the problem existed in the prior art skimmer baskets, which is not a part of Felix, Jr. et al.'s invention.

Secondly, Felix, Jr. et al. teach away from Applicants' claimed invention. As positively recited and specifically described in the instant Specification as filed, Applicants' claimed skimmer basket weight has a hollow opening for allowing water flowing through the hollow opening. As described above, Felix, Jr. et al.'s

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weight (500) does not have a hollow opening for allowing water flowing through therein. On the contrary, the structure and positioning of Felix, Jr. et al.'s weight (500) teach exactly the opposite what the Applicants' claimed invention intends to overcome. This is shown on page 8, line 22 to page 9, line 3 of the instant Specification.

Third, and more importantly, Felix, Jr. et al. fail to teach the weight being covered by a water proof coating.

Applicants respectfully point out that the Examiner has misconstrued Felix, Jr. et al.'s teaching. More specifically, in Column 10, lines 11-16, Felix, Jr. et al. teach that the handle (300) with the weight (500) is attached to the skimmer basket (210) by using a marine grade epoxy and adhering the bottom of the weight to the bottom of the skimmer basket. Felix, Jr. et al.'s weight is not covered by a water proof coating, instead, Felix, Jr. et al. merely use an adhesive to attach the bottom of the weight to the basket. This is substantially different from Applicants' water proof coating including plastic, rubber, or paint.

As a matter of fact, the structural feature of the weight covered by a water proof coating in Applicants' claimed invention is completely absent in both references.

Based on all above discussed reasons, one ordinary skilled in the art would not be motivated to try to combine the two references, in the manner suggested by the Examiner, to obtain Applicants' claimed invention.

Therefore, Applicants maintain that Applicants' claimed invention defined by Claims 1, 8, 12 and 15 is not obvious.

With regard to Claims 2-7, 9-11, 13-14 and 16-17, as described above, these claims are dependent upon independent Claims 1, 8, 12 and 15, respectively. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claims 1, 8, 12 and 15 are unobvious in view of the prior art of record, as such Claims 2-7, 9-11, 13-14 and 16-17 are

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submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 1-17 based upon 35 U.S.C. §103(a).

It is respectfully submitted that Claims 1-17, the pending claims, are now in condition for allowance and such action is respectfully requested.

Applicant's Agent respectfully requests direct telephone communication from the Examiner with a view toward any further action deemed necessary to place the application in final condition for allowance.

12/13/2004
Date of Signature

By: 
Yi Li
Registration No. 44,211
Agent of the Applicant

Address correspondence to:

Melvin K. Silverman
500 Cypress Creek Road
Suite 500
Fort Lauderdale, Florida 33309
Telephone: (954) 351-7474
Facsimile: (954) 492-0087